

No. 12732

United States
Court of Appeals
for the Ninth Circuit.

HEE KEE CHUN, Administratrix of the Estate
of CHUN CHIN, Deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Territory of Hawaii.

FILED

JAN 31 1951

EARL S. O'BRIEN
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Plaintiff:

HEE KEE CHUN,
Administratrix of the Estate of Chun Chin,
Deceased.

W. Y. CHAR, ESQ.,
Bishop National Bank Branch Bldg.,
Honolulu, T. H.

For the Defendant:

UNITED STATES OF AMERICA,
UNITED STATES DISTRICT ATTORNEY,
District of Hawaii,
Federal Building,
Honolulu, T. H.

In the United States District Court in and for the
District and Territory of Hawaii

Civil No. 905

HEE KEE CHUN, Administratrix of the Estate of
Chun Chin, Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

First Count

I.

The action, brought under Paragraph 20 of Section 24 of the Act of March 3, 1911, 36 Stat. 1093, as amended (U. S. C. Title 28, Sec. 41(20)) as amended, Title 28, U. S. C. (Investigation of 1948), Sec. 1346 (a) (2), is founded upon an express contract with the Government of the United States.

II.

The amount in controversy does not exceed the sum of \$10,000.00.

III.

Plaintiff sues in the capacity of Administratrix of the Estate of Chun Chin, deceased. Said Chun Chin died on the 3rd day of February, 1949, in Honolulu,

City and County of Honolulu, Territory of Hawaii. On the 11th day of March, 1949, she was duly appointed Administratrix of the estate of Chun Chin, deceased, by the Circuit Court of the First Judicial Circuit, Territory of Hawaii, Probate No. 15642, and she has duly qualified as Administratrix of such estate.

IV.

The Territory of Hawaii is a duly incorporated territory. Section 91 of the Organic Act, so far as pertinent, reads:

“Except as otherwise provided, the public property set and transferred to the United States by the Republic of Hawaii, under the joint resolution of administration approved July 7, 1898, numbered 55(T) (30th S. page 750), shall remain in the possession, use and control of the Government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense until otherwise provided for by Congress, or taken for the United States and possession of the United States by direction of the President or of the Government of Hawaii.” 48 U. S. C. A., Sec. 511.

By reason thereof, the Territory of Hawaii became the authorized agent of the defendant in the maintenance, management and care of the public property of the United States within the Territory of Hawaii.

V.

On or about the 30th day of October, 1936, the defendant's authorized agent, Territory of Hawaii, and said Chun Chin entered into a lease agreement, in writing, a copy of which is attached hereto and marked Exhibit "A" and made a part hereof.

That, in pursuance to said lease, said Chun Chin built a new two-story building on said premises and occupied same in 1936, and from 1936, up to the time of the taking by the defendant as hereinafter described, said Chun Chin operated a grocery store and a gasoline service station on said premises.

Chun Chin as duly performed all of the conditions required by said contract to be performed on his part.

VI.

During the latter part of 1943, Acting Secretary of the Navy Forrestal, an official of the defendant, directed Governor I. M. Stainback to take steps to set aside the land described in Exhibit "A" pursuant to the provisions of the statute quoted in Paragraph IV hereof for use of the United States Navy.

VII.

On November 18, 1943, the Government of the Territory of Hawaii issued an executive order setting aside the property described in said lease agreement for the use of the United States Navy, pursuant to the direction of said Secretary of the Navy Forrestal.

VIII.

That in August, 1944, defendant, through its authorized agent, United States Navy at Pearl Harbor, took possession of said property and ousted the plaintiff from said property and occupied the said property up to the present time.

IX.

By virtue of the breach of said contract, said Chun Chin has suffered damages in excess of the sum of \$10,000.00 for the loss of his building, his businesses and his lease agreement, but waiving any sum in excess of the total sum of \$10,000.00.

Second Count

For a separate and distinct cause of action, plaintiff herein reiterates and realleges the allegations contained in Paragraphs II, III, IV, VI and VIII of the First Count.

I.

The action, brought under Paragraph 20 of Section 24 of the Act of March 3, 1911, 36 Stat. 1093, as amended (U. S. C. Title 28, Sec. 41(20)) as amended, Title 28, U. S. C. (Investigation of 1948), Sec. 1346 (a)(2), is founded upon an implied contract with the Government of the United States.

II.

On or about the 30th day of October, 1936, the

defendant's authorized agent, Territory of Hawaii, permitted said Chun Chin to take possession of the property described in Exhibit "A." Thereafter said Chun Chin built a new two-story building on said premises, and occupied same from 1936 up to the time of taking in August, 1944, by the United States Navy, an authorized agent of the defendant. In October, 1936, said Chun Chin operated a grocery store and gasoline service station on said premises with the consent and knowledge of the defendant. He was prevented in the operation of said businesses in August, 1944.

III.

By reason of the defendant's occupation of said building, said Chun Chin has suffered damages in the sum of \$10,000.00 for the loss of said building.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$10,000.00, with interest thereon, for the loss of said building, and costs, or in the alternative in the sum of \$8,500.00, with interest thereon, for the loss of said building, and \$1,500.00, with interest thereon, for the loss of said businesses and lease agreement, and costs.

Dated: Honolulu, T. H., March 31st, 1949.

/s/ HEE KEE CHUN,

Administratrix of the Estate of Chun Chin, deceased, Plaintiff.

EXHIBIT "A"

General Lease No. 2515

This Indenture made this 30th day of October, A.D. 1936, between the Commissioner of Public Lands for and on behalf of the Government of the Territory of Hawaii, of the first part, hereinafter called the lessor, and Chun Chin, of Aiea, Oahu, of the second part, hereinafter called the Lessee, being the highest qualified bidder for the lease duly advertised and sold at public auction in conformity with Section 73 of the Hawaiian Organic Act and the Laws of the Territory of Hawaii:

Witnesseth, That for and in consideration of the rents, covenants and agreements hereinafter reserved and contained, on the part and behalf of the said Lessee, to be paid, kept and performed, he, the said Lessor, by virtue of the authority in him vested, has demised and by these presents does demise and lease unto the said Lessee, all of that portion of the Government Land of

Aiea, Ewa, Oahu, being Parcel 12-A, Aiea Government Remnants, which parcel of land is more particularly described as follows:

Being portion of the Government land of Aiea situate between the East side of the Oahu Railway & Land Company's Railroad Right-of way (80 feet wide) and the Southwest side of Kamehameha Highway. (N.R.H. 9-A)

Beginning at a pipe at the East corner of this parcel of land, and on the Southwest side of Kamehameha Highway (N.R.H. 9-A), the coordinates

of said point of beginning referred to Government Survey Trig. Station "Salt Lake" being 4387.34 feet North and 8471.20 feet West, as shown on Government Survey Registered Map 2677, and running by azimuths measured clockwise from true South:

1. Along the foot of Bluff along government land, the direct and distance being: $46^{\circ} 00'$ 116.40 feet to a pipe;

2. Thence along the East side of the Oahu Railway & Land Company's Railroad Right-of-way on a curve to the left with a radius of 534.40 feet, the direct azimuth and distance being: $183^{\circ} 43' 33''$ 100.33 feet to a pipe;

3. $180^{\circ} 05'$ 79.80 feet to a pipe;

4. $177^{\circ} 29'$ 28.60 feet to a pipe;

5. $241^{\circ} 02' 44''$ 17.65 feet to a pipe;

6. Thence along the Southwest side of Kamehameha Highway (N.R.H. 9-A), on a curve to the right with a radius of 1035.48 feet, the direct azimuth and distance being, $335^{\circ} 11' 57''$ 150.00 feet to the point of beginning.

Area 0.218 Acre

Subject, however, to an easement right in favor of the Territory of Hawaii for the existing Drain Ditch which crosses this parcel of land as shown on the plan hereto attached and made a part hereof, together with the right of ingress and egress to and from said drain ditch, for maintenance and repairs.

To Have And To Hold, all and singular the said premises herein mentioned and described with the appurtenances, unto the said Lessee, for and during the term of twenty one (21) years, to commence

from the 30th day of October, A.D. 1936: Yielding And Paying therefore the annual rent of Two Hundred and 00/100 Dollars (\$200.00), in United States gold coin or currency, payable by equal semi-annual payments in advance, at the office of the Commissioner of Public Lands, in Honolulu, on the 30th day of each October & April of each and every year over and above all taxes, charges and assessments to be levied or imposed thereon by Legislative Authority.

The Lessee does hereby Covenant to and with the Lessor, that the said rent shall be paid in manner aforesaid.

And Also, That the Lessee shall and will from time to time during the term of this lease, pay and discharge all taxes, impositions and assessments, ordinary or extraordinary, which may hereafter, at any time during the continuance of the said term, be laid, imposed, assessed or charged on the said demised premises, or any part thereof, or upon any part thereof, or upon any improvements made or to be made thereon.

And Also, That the Lessee shall and will bear, pay and discharge, at his own cost and expense, all costs and charges for fencing the whole or any part of the above-described premises, if such fencing shall be required by the Lessor, or should be so required by any law now in force, or that may be hereafter enacted, and shall and will maintain the fences so constructed, or previously constructed, in a stockproof condition during the full term of this

lease, and shall and will indemnify the said Lessor of, from and against all damages, costs, expenses and charges which he or the Government of the Territory of Hawaii may at any time sustain by reason or any neglect or refusal of the Lessee in the performance of the premises and agreements last aforesaid.

And Also, That the Lessee shall and will at the end, or other sooner determination of the said term hereby granted peaceably and quietly yield up unto the Lessor all and singular the premises herein demised, with all erections, buildings, and improvements of whatever name or nature, now on or which may be hereafter put, set up, erected or placed upon the same, in as good order and condition in all respects reasonable use, wear, and tear excepted, as the same are at present or may hereafter be put by the Lessee.

And Also, That the Lessee shall not demise, let, set or assign over the said premises, or any part thereof, or assign this lease or any interest therein to any person or persons whomsoever, for any term or time whatsoever, without prior consent in writing of the Lessor.

And The Lessor does hereby covenant to and with the Lessee, that the Lessee shall at all times during the term hereby granted, so long as he shall pay the annual rent, and keep and observe the covenants, conditions and agreements, herein contained, peaceably and quietly have, hold, occupy, possess and enjoy all of the said demised premises, and every

part and parcel thereof, with the appurtenances.

It Is Mutually Agreed, That at any time or times during the term of this lease, the land demised, or any part or parts thereof, may at the option of the Lessor, on behalf of the Territory of Hawaii, or any person or persons, corporation or corporations, be withdrawn from the operation of this lease for homestead or settlement purposes, or for storing, conserving, transporting and conveying water for any purpose, or for reclamation purposes, or for forestry purposes, or for telephone, telegraph, electric power, railway or roadway purposes, or for any public purpose, or for sale for any purpose for which land may be sold under the provisions of Section 73 of the Hawaiian Organic Act as now or hereafter amended, and possession resumed by the Lessor, in which event the land so withdrawn shall cease to be subject to the terms, covenants and conditions of this lease, and the rent hereinabove reserved shall be reduced in proportion to the value of the part so withdrawn.

It Is Also Mutually Agreed And Understood, that the land herein leased is to be used for business purposes, more especially a Gasoline Service Station and appurtenances.

It Is Also Mutually Agreed And Understood, that the Lessee shall, at his own cost and expense, spend not less than Three Thousand and 00/100 Dollars (\$3,000.00) for the erection of improvements necessary for the operation of a gasoline service station and appurtenances.

It Is Also Mutually Agreed And Understood, in accordance with the Notice of Sale of this Lease, dated August 21, 1936, (Ad Bk. 12—p. 46.6), that the Lessor reserves, and it does hereby reserve the right of its agents or representatives, and its political subdivisions, to enter or cross the land herein leased, at any time in the performance of their duties.

Provided Always, And these presents are upon this condition that if the rent hereinbefore reserved, shall be unpaid for thirty days after the same is due: or if the Lessee shall fail to well and truly observe, keep or perform any of the covenants and agreements on his part to be observed, kept and performed, or in case the Lessee shall be adjudged bankrupt, then and from thenceforth, in any of the said cases, it shall be lawful for the Lessor, without warrant or other legal process to enter into and upon the said hereby demised premises, or any part thereof, in the name of the whole, and the same to have again, repossess and enjoy, as in his first and former estate and right, and thereby terminate this lease.

Provided Lastly, That the Lessor and Lessee, the successors in office of the said Lessor, and the heirs, executors, administrators and assigns, or the successors and assigns, of the said Lessee, as the case may be, shall be respectively bound by and entitled to the benefit of these presents and to the covenants, conditions, and amends therein contained, in like manner as if the words "successors in office" were inserted next after the word "Lessor" throughout

and as if the words "heirs, executors, administrators and assigns" or the words "successors and assigns," as the case may be were inserted after the word "Lessee" throughout, so far as the nature of the case will permit and unless the context may require a different construction.

In Witness Whereof, The parties hereto have caused this instrument and one other instrument * * * of like date and even tenor herewith to be duly executed upon the day and year first above written.

/s/ L. M. WHITEHOUSE,
Commissioner of Public
Lands.

/s/ CHUN CHIN.

City and County of Honolulu,
Territory of Hawaii—ss.

On this 3rd day of December, 1936, before me personally appeared L. M. Whitehouse, Commissioner of Lands for the Territory of Hawaii, to me known to be the person who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Commissioner of Public Lands on behalf of the Territory of Hawaii.

/s/ RACHEL O'SULLIVAN,
Notary Public, 1st Judicial Circuit, Territory of
Hawaii.

City and County of Honolulu,
Territory of Hawaii—ss.

On this 2nd day of December, A.D. 1936, before me personally appeared Chun Chin, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

/s/ A. APOLIONA,
Notary Public, 1st Judicial Circuit, Territory of
Hawaii.

[Title of District Court and Cause.]

SUMMONS

To The Above-Named Defendant:

You are hereby summoned and required to serve upon W. Y. Char, plaintiff's attorney, whose address is 219 Bishop National Bank Branch Building, Honolulu, T. H., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.
Clerk of Court.

Dated: March 31, 1949.

Return on Service of Writ

[Title of Cause.]

United States of America,
 District of—ss.

I hereby certify and return that I served the annexed Summons on the therein-named United States of America, Defendant by handing to and leaving a true and correct copy thereof with Ray J. O'Brien, U. S. District Attorney for the District of Hawaii, personally at Honolulu, T. H., in said District on the 4th day of April, A.D. 1949, and by mailing 2 copies by registered mail, return receipt requested to Tom C. Clark, Washington, D. C. (Attorney General of U. S.) on April 4, 1949.

OTTO F. HEINE,
 U. S. Marshal.

By /s/ GEORGE E. BRUN,
 Deputy.

Return Receipt attached.

[Endorsed]: Filed March 31, 1949.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the United States of America, Defendant above-named, by its Attorney, Ray J. O'Brien, United States Attorney for the District of Hawaii and moves this Honorable Court to dismiss the Complaint filed herein on the following ground:

I.

No claim is stated in the Complaint filed herein upon which relief can be granted by this Honorable Court.

Wherefore, it is respectfully prayed that the Complaint herein be dismissed.

Dated: Honolulu, T. H., this 1st day of September, 1949.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii,

By /s/ HOWARD K. HODDICK,
Assistant United States
Atty., District of Hawaii.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 2, 1949.

[Title of District Court and Cause.]

RENEWED MOTION TO DISMISS

Comes now the United States of America, Defendant above-named, by Ray J. O'Brien, United States Attorney for the District of Hawaii and states as follows:

I.

A Motion to Dismiss the Complaint filed herein on the ground that no claim is stated in the Complaint upon which relief can be granted by this Honorable Court was filed with a supporting Memorandum of Points and Authorities on September 2, 1949.

II.

The Plaintiff filed a Memorandum of Points and Authorities in Opposition to Motion to Dismiss on July 24, 1950. The Defendant filed a Reply Memorandum on August 31, 1950, and the Plaintiff filed a further Reply Memorandum on September 6, 1950.

III.

The Motion was heard by the Honorable Delbert E. Metzger, Judge, United States District Court for the District of Hawaii on September 13, 1950, and after extensive argument the court denied the Motion without prejudice and gave leave to the Defendant to resubmit the same Motion to the other

Division of this Honorable Court suggesting that there would soon be a change in the calendar and the case would be tried in the other Division of this court.

IV.

The Honorable Delbert E. Metzger further directed that the Defendant did not have to file an Answer to the Complaint until five (5) days after the resubmitted Motion had been disposed of by the other Division of this Court.

Wherefore, the Defendant renews its Motion that the Complaint filed herein be dismissed on the ground that no claim is stated in the Complaint upon which relief can be granted by this Honorable Court and in support of this Motion relies on the memorandum filed with this Court on September 2, 1949, and August 31, 1950.

Dated: Honolulu, T. H., this 14th day of September, 1950.

RAY J. O'BRIEN,
United States Attorney,
District of Hawaii.

By /s/ HOWARD K. HODDICK,
Assistant United States
Atty., District of Hawaii.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 14, 1950.

[Title of District Court and Cause.]

MINUTE ORDER

Whereas, a Motion to Dismiss on the ground that no claim is stated in the Complaint filed herein upon which relief can be granted by this court, was filed by the Defendant on September 2, 1949; and,

Whereas, the said Motion to Dismiss was heard by this Division of this court on September 13, 1950, the Plaintiff being represented by her attorney, W. Y. Char, Esquire, and the Defendant by Howard K. Hoddick, Assistant United States Attorney; and,

Whereas, due to probable early change of calendar, this case, if it proceeds to trial, will likely be tried before the other Division of this court; and,

Whereas, I have considerable doubt in my mind, but not wholly free of uncertainty, that the aforesaid Motion to Dismiss is well founded and think it best to have a final or further ruling on the merits of the Motion made by the Judge who will try the case;

It Is Hereby Ordered that the Motion to Dismiss filed with this court on September 2, 1949, by the Defendant is hereby denied without prejudice, with leave to the Defendant to bring the same matter contained in the Motion to the attention of my associate in the other Division of this court or to such Judge as may try this case; and

It Is Further Ordered that the Defendant may have until five (5) days after such matter has been

disposed of, if Defendant's contentions as to dismissal are not sustained, to answer the complaint filed herein.

Dated: Honolulu, T. H., this 18th day of September, 1950.

/s/ DELBERT E. METZGER,
Judge, United States
District Court.

[Endorsed]: Filed September 18, 1950.

In the United States District Court
for the District of Hawaii

Civil No. 905

HEE KEE CHUN, Administratrix of the Estate
of Chun Chin, Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER

The defendant herein having filed a renewed motion to dismiss the complaint on the ground that no cause of action upon which relief can be granted by this court is stated therein, and said motion having been heard by this court on September 26, 1950, the plaintiff being represented by her attorney, W. Y. Char, Esquire, and the defendant by Howard K. Hoddick, Assistant United States Attorney, and this court having found that no cause of action upon which relief can be granted by this court is stated in the complaint;

It Is Hereby Ordered and Adjudged that the complaint be and is dismissed.

Dated at Honolulu, T. H., this 26th day of September, 1950.

/s/ J. FRANK McLAUGHLIN,
Judge, U. S. District Court.

[Endorsed]: Filed September 27, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Hee Kee Chun, Administratrix of the Estate of Chun Chin, deceased, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final order entered in this case on the 27th day of September, 1950.

Dated: Honolulu, T. H., this 5th day of October, 1950.

W. Y. CHAR and
SAU UNG CHAN,
Attorneys for Plaintiff.

By /s/ W. Y. CHAR.

[Endorsed]: Filed October 5, 1950.

[Title of District Court and Cause.]

ORAL RULING

In the above-entitled matter held at Honolulu,
T. H., September 26, 1950.

Before: Hon. J. Frank McLaughlin,
Judge.

Appearances:

W. Y. CHAR, ESQ.,

Appealing for the Plaintiff.

HOWARD K. HODDICK, ESQ.,

Assistant U. S. Attorney,

Appearing for the Defendant.

Honolulu, T. H., September 26, 1950

The Clerk: Civil No. 905, Hee Kee Chun vs.
United States of America. Hearing on Motion to
Dismiss.

The Court: Oh, yes. Are the parties ready to
proceed?

Mr. Char: Yes, your Honor.

Mr. Hoddick: Ready for the movant, your
Honor.

The Court: Very well, you may do so.

(Argument on motion by Mr. Hoddick and
Mr. Char.)

The Court: This is a motion to dismiss on the
ground that the Complaint does not state a cause

of action under the Tucker Act. I am inclined to believe the motion is well taken, which likewise was the opinion of Judge Metzger.

It is quite clear to me on the facts alleged that no claim under the Tucker Act against the Federal Government is stated. The lands involved were at all times the public property of the United States. It held title thereto, although, under the provisions of Section 91 of the Organic Act, possession was given to the Territory of Hawaii. When the deceased took possession of the lands in question under a contract, or a lease, with the Territory, he did so with full knowledge of the provisions of Section 91 of the Organic Act and all other pertinent laws.

Clearly, as to the improvements, the provisions of the lessee's contract with the Territory provided that at the termination of the lease, namely, at the end or other sooner determination, all improvements erected upon the land of a permanent nature by the lessee shall become the property of the Territory. There is no dispute in facts here but what these improvements were of a permanent nature and permanently affixed to the land. Under the provisions of law and of this lease, when fixtures are attached to the land permanently, they become part of the land and belong to the owner of the land, which in this instance was the United States.

Additionally is that proposition fortified by this provision of the lease with the Territory, and the taking back of its public lands by the Federal

Government through the Territorial Governor's Act here is within the scope of the phrase "or other sooner determination of this lease."

The bringing of the lease to an end makes those improvements the property of the owner of the fee, which in this instance is the Federal Government. So I am satisfied that, applying the law to the facts alleged in this Complaint, the motion is well taken, that the Complaint does not spell out in either of its alleged causes of action an implied contract under the Tucker Act; consequently, a failure to state a claim over which this Court has jurisdiction; the motion is well taken and is granted.

It may be, perhaps, as suggested by the Ninth Circuit, and now suggested by this Court, and likewise expressing no opinion, but it does seem to me that if this party has any claim at all, it would lie in the direction of the Territory and not the Federal Government. But, again I repeat: I am expressing no opinion as to whether or not this Estate's claim against the Territorial Government would or would not, under Territorial law, be well taken. All I am called upon to decide is whether or not the cause of action here in this Complaint, in either of the counts, as stated, under the Tucker Act, is a good claim against the United States.

I find, to repeat myself, that in point of law, taking the facts as pleaded as true, they do not spell out a cause of action under either of the counts under the Tucker Act; and for those rea-

sons, as I have said, the motion as to each count is granted.

Mr. Char: May I note an exception and note an appeal.

(Discussion between Court and Council as to time for appeal.)

(Thereupon, at 11:45 a.m. hearing in the above-entitled matter was adjourned.)

Reporter's Certificate

I, Lucille Hallam, Official Reporter, United States District Court, District of Hawaii, do hereby certify that the foregoing is a true and correct transcript of my shorthand notes taken in Civil No. 905, Hee Kee Chun, etc., vs. United States of America, held at Honolulu, T. H., September 26, 1950, of the Oral Ruling of Hon. J. Frank McLaughlin, Judge.

Oct. 11, 1950.

/s/ LUCILLE HALLAM.

[Endorsed]: Filed November 2, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,

District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings and transcript of proceedings:

Complaint and Summons.

Motion to Dismiss.

Renewed Motion to Dismiss.

Minute Order.

Order.

Notice of Appeal.

Designation of Record on Appeal (Appellant).

Designation of Record on Appeal (Appellee).

Oral Ruling (Transcript of Proceedings) September 26, 1950.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of November, 1950.

[Seal] /s/ WM. F. THOMPSON, JR.,

Clerk, United States District Court, District of Hawaii.

[Endorsed]: No. 12732. United States Court of Appeals for the Ninth Circuit. Hee Kee Chun, Administratrix of the Estate of Chun Chin, deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court of the District of Hawaii.

Filed November 10, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

Civil No. 905

HEE KEE CHUN, Administratrix of the Estate
of CHUN CHIN, Deceased,

Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,

Defendant-Appellee.

STATEMENT OF POINTS

Comes now Hee Kee Chun, Administratrix of the estate of Chun Chin, deceased, Plaintiff-Appellant, in the above-entitled cause, and states that she

intended to rely on the following points on her appeal to this Honorable Court:

1. The Court erred in granting the motion to dismiss the complaint for failure to state a claim upon which relief can be granted.

2. The Court erred in holding that under provisions of law and of the lease, the Plaintiff-Appellant's decedent had no compensable interest in the improvements.

3. The Court erred in assuming that the Defendant-Appellee repossessed Parcel 12-A under the lease.

4. The Court erred in holding that the repossession was within the contemplation of the terms of the lease.

W. Y. CHAR and
SAU UNG CHAN,

By /s/ W. Y. CHAR,
Attorney for Plaintiff-
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 10, 1950.